



FILED
ORNIA
09:31 AM

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's Own Motion into the Rates, Operations, Practices, Services and Facilities of Southern California Edison Company and San Diego Gas and Electric Company Associated with the San Onofre Nuclear Generating Station Units 2 and 3.

Investigation 12-10-013

And Related Matters.

Application 13-01-016
Application 13-03-005
Application 13-03-013
Application 13-03-014

**RULING OF ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW
JUDGE SETTING SCHEDULE AND CLARIFYING ISSUES FOR
EVIDENTIARY HEARINGS**

This ruling sets forth the schedule for the remainder of the proceeding, and the scope for evidentiary hearings.

Summary

The following parties filed status conference statements on October 30, 2017: 1) Southern California Edison (SCE); 2) San Diego Gas & Electric Company (SDG&E); 3) the Office of Ratepayer Advocates (ORA); 4) Joint statement of The Utility Reform Network (TURN), California Large Energy Consumers Association(CLECA), and Direct Access Customer Coalition (DACC); 5) a Joint Statement from Ruth Henricks and the Coalition to Decommission San Onofre (CDSO); 6) Alliance for Nuclear Responsibility

(A4NR), and 7) California State University (CSU). A status conference was held on November 7, 2017 in the Commission's Los Angeles office.¹

The parties requested: 1) clarification as to the scope of upcoming evidentiary hearings; 2) modifications to the schedule proposed in the assigned Commissioner and assigned Administrative Law Judge's (ALJ) Ruling of October 10, 2017; and 3) a process to expedite discovery disputes. All parties that submitted status conference statements, except the utilities, requested a stay in collection of rates ordered in D.14-11-040.²

This ruling will clarify the issues to be addressed in prepared testimony, evidentiary hearings, and briefings, modify the prior proposed schedule, and provide notice of documents that the Commission will take official notice of consistent with Rule 13.9.³

1. Discussion

As stated in the October 10, 2017 ruling we will take additional testimony, hold evidentiary hearings, and allow for further briefing to ensure we have a full record to determine the appropriate rate recovery for the premature closure of San Onofre Nuclear Generation Station (SONGS) Units 2 & 3. This ruling

¹ The Commission offices in Los Angeles are located at 320 West 4th Street, Ste. 500, Los Angeles, CA. All evidentiary hearings for this proceeding will be held in the Los Angeles unless otherwise noted.

² The issues are limited solely to rate recovery in the context of just and reasonable allocation of cost between ratepayers and the utilities for the premature closure of SONGS Units 2 and 3.

³ It should also be noted that Ruth Henricks, and the Coalition to Decommission San Onofre (CDSO) timely filed an Application for Rehearing of D.14-11-040 on December 18, 2014. This application remains pending before the Commission and is not within the scope of the reasonableness review that will be conducted consistent with this ruling. The Commission has a process set out in the Commission Rules of Practice and Procedure for resolving applications for rehearing. See Rules 16.1 through 16.3.

provides additional clarification as to the issues that will be examined in conducting our reasonableness review of the issues identified below.

2. Background

The Commission adopted Decision (D.) 14-11-040 approving a settlement (the Settlement) among a sub-set of the parties in this proceeding, as amended and restated by the settling parties⁴ on November 20, 2014. On February 9, 2015 Southern California Edison Company (SCE) late-filed a Notice of *Ex Parte* Communication concerning a meeting that occurred on or about March 26, 2013 between SCE's then Executive Vice President Stephen Pickett and then Commission President Michael Peevey at an industry conference in Warsaw, Poland regarding ratemaking treatment of SONGS Units 2 & 3 post-shutdown costs. On April 10, 2015, Harvey Morris, an Assistant General Counsel in the Commission's Legal Division, served to the service list in this proceeding, by email, a copy of the notes that have been referred to as the "Bristol Notes."⁵ SCE then filed a supplement to its February 9, 2015 late-filed Notice of *Ex Parte* Communication on April 13, 2015 which included as an attachment the "Bristol Notes." On April 27, 2015 the Alliance for Nuclear Responsibility (A4NR) filed a PFM of Decision (D.) 14-11-040 based on the new information that resulted from disclosure of the late filed *ex parte* communications and Bristol Notes. A4NR amended its PFM on May 26, 2015. Responses to the amended PFM were filed

⁴ The Settlement was not an all-party settlement, a number of parties objected to the Settlement at the time it was adopted by the Commission.

⁵ The "Bristol Notes" were attached to the April 27, 2015 PFM filed by A4NR and to the December 13, 2016 Joint Ruling of the Assigned Commissioner and Administrative Law Judge in this proceeding.

by SDG&E, SCE, The Utility Reform Network (TURN), and Women's Energy Matters (WEM.) A4NR was granted the right to reply to the responses.

The Office of Ratepayer Advocates (ORA) filed a separate PFM on August 11, 2017 stating that it supports TURN's recommendation that the Commission should reject the SONGS settlement, place the Phase 1 proposed decision on the Commission agenda, draft a Phase 2 proposed decision, and set a PHC for Phase 3 to establish a schedule for testimony, hearings and briefing. Neither ORA nor TURN currently support the settlement adopted in D.14-11-040. The only parties to the Settlement that continue to support D.14-11-040 as adopted are SCE and SDG&E.

On December 8, 2015 the Commission issued D.15-12-016 affirming eight violations of Rule 8.4 of the Commission's Rules by SCE. This decision also found that SCE on two occasions violated Rule 1.1, the Commission's Ethics Rule, as a result of the acts and omissions of SCE and its employees, including misleading the Commission, disrespecting Commission rules, and undermining public confidence in the agency. SCE was fined \$16,740,000 for the violations and ordered to maintain a website tracking all non-public communications related to these consolidated proceedings between SCE and Commission decision makers.

On May 9, 2016 the (then) assigned Commissioner Sandoval and (then) assigned ALJ Bushey issued a ruling reopening the record and setting a briefing schedule. Parties were also relieved of their obligation to support the Settlement. The parties submitted briefs on their respective positions. A ruling was issued by then assigned Commissioner Sandoval and assigned ALJ Houck on December 13, 2016 ordering the parties to meet and confer to determine whether they could reach an agreement on modifications to the prior adopted settlement

in light of the late filed *ex parte* notice by SCE, and the violations affirmed in D.15-12-016. The parties requested an extension of the meet and confer timeline to August 15, 2017. This extension was granted in a ruling on May 26, 2017. The parties filed position statements on August 15, 2017 stating that no agreement was reached and each party filing set forth its recommendation on how to proceed in this matter. On October 10, 2017 we issued a ruling setting forth a process for making a determination on the remaining issues in the proceeding. This process includes taking testimony, holding evidentiary hearings, and party briefing on legal issues.

The settling parties no longer have a meeting of the minds and the ratepayer advocacy parties no longer support the Settlement as adopted. The majority of the parties in this proceeding argue that had they been privy to the *ex parte* communication between SCE executives and former Commission President Peevey, the “Bristol Notes”, and other information recently disclosed, they would have either held a better bargaining position in settlement negotiations, or had an opportunity to present a stronger case in opposition to the Settlement prior to adoption by the Commission. The new information that should have been made available to all parties and the Commission prior to adoption of D.14-11-040 includes the “Bristol Notes,” additional communications between SCE and former President Peevey that are described in e-mails that have since been made public, contract provisions between MHI and SCE that were not previously reviewed by the parties or the Commission, as well as contract provisions concerning nuclear fuel purchases. SCE had access to information that was significant to the determination of the reasonableness of the Settlement prior to its adoption that was not disclosed to the parties or the Commission. It therefore is necessary for the Commission to allow parties an opportunity to

present additional testimony, cross examination and briefing prior to issuing a decision in this matter.

Given the circumstances now before the Commission, we have serious concerns as to whether the adopted Settlement meets the requirements of Rule 12.1(d). We therefore will conduct the reasonableness review that the Commission reserved the right to conduct in D.05-12-040, as to the rate recovery authorized in D.14-11-040. In D. 05-12-040 the Commission authorized the steam generation replacement project (SGRP) and accepted SCE's SGRP estimate of \$680 million⁶ as a reasonable estimate of the SGRP cost. However, that decision stated "[i]f the SGRP cost exceeds \$680 million, or the Commission later finds that it has reason to believe the costs may be unreasonable regardless of the amount, the entire SGRP cost shall be subject to a reasonableness review."⁷ In reopening the record in this proceeding, the Commission may reevaluate the reasonableness of the SGRP costs. This reasonableness review will ensure that the decision adopted by the Commission in this proceeding is based on a complete record, is in compliance with the law, and in the public interest.

3. Reasonableness Review/Prudence Standard

The Commission's standard for reasonableness⁸ as affirmed in prior decisions is as follows:

The term reasonable and prudent means that at a particular time any of the practices, methods and acts engaged in by a utility follows the exercise of reasonable judgment in light of the facts known or which should have been known at the time

⁶ D.11-05-035 reduced the \$680 million approved by D.05-12-040 to \$670.8 million to reflect changes in the project's scope.

⁷ D.05-12-040 at 5, 11, and 49.

⁸ See D.14-06-007 and D.87-06-021.

the decision was made. The act or decision is expected by the utility to accomplish the desired result at the lowest reasonable cost consistent with good utility practices. Good utility practices are based upon cost effectiveness, safety and expedition.⁹

The scope of the reasonableness review, including the evidentiary hearings scheduled in this ruling will be limited to information directly impacting what rate recovery is just and reasonable given the failed SGRP and premature closure of SONGS Units 2 & 3.

The Commission's standard for conducting a reasonableness review is consistent with the generally accepted standard for conducting reasonableness reviews by Commissions regulating utility industries.

Prudence according to the Random House Dictionary 'is care, caution, and good judgement, as well as wisdom in looking ahead.' Prudence thus involves foresight, not hindsight. Decisions must be judged as to their reasonableness at the time they were made and not after the fact.¹⁰

Reasonableness or prudence has been determined to be:

A prudence review must determine whether the company's actions, based on all that it knew or should have known at the time were reasonable and prudent in light of the circumstances which then existed. It is clear that such a determination may not properly be made on the basis of hindsight, nor is it appropriate for the [commission] merely to substitute its best judgement for the judgements made by the company's managers.¹¹

⁹ D.17-11-033 citing to 24 CPUC 2d 476, 486.

¹⁰ Phillips, Charles F., *The Regulation of Public Utilities*, Public Utilities Reports, Inc. 1993 at 340.

¹¹ *Id.* at 340-1, citing *In re Western Mass. Elec. Co.* 80 PUR4th at 501.

Additionally, we must look to whether the conduct was reasonable at the time:

The company's conduct should be judged by asking whether the conduct was reasonable at the time, under all the circumstances, considering that the company had to solve its problems prospectively rather than in reliance on hindsight. In effect, our responsibility is to determine how reasonable people would have performed the task that confronted the company.¹²

The Commission reserved the authority to conduct such a reasonableness review when it authorized the SGRP in D.05-12-040. We therefore will conduct a reasonableness review of the provisions set forth above in light of the information that should have been available prior to adoption of D.14-11-040.

4. Discovery

Due to setting an expedited schedule the parties must work together and cooperate to ensure that all parties have access to reasonable discovery. The parties are to interpret the issues identified for the scope of the proceeding broadly. Pursuant to Rule 10.1, the parties are to the extent a matter is not privileged, or the burden, expense, or intrusiveness of that discovery outweighs the likelihood that information sought will lead to the discovery of admissible evidence, the parties are to respond to discovery requests within 10 days. The parties are directed to the email ruling issued in this proceeding on November 14, 2017. Lastly parties shall promptly bring discovery disputes, which cannot be resolved between parties, to the attention of the Administrative Law Judge to ensure efficient management of this proceeding.

¹² *Id.* at 341 citing *In re Consolidated Edison, Co. of N.Y., Inc.*, Opinion No. 79-1 (N.Y. 1979), 5-6.

5. Issues for Written Testimony and Hearings

This ruling directs parties to submit written testimony about issues within the scope of the proceeding identified below. After the exchange of written direct and reply testimony, an evidentiary hearing will be held if disputed issues of fact remain. Evidentiary hearings are a procedural tool for the Commission to develop the evidentiary record regarding disputed issues of fact material to the scope of a proceeding. When the evidentiary hearing is complete, parties will be able to submit legal arguments in briefs. The Commission's reasonableness review will assess all information admitted in the evidentiary record and legal arguments submitted in briefs later in this proceeding.

Testimony and briefing in this proceeding is limited to the issue of reasonable rate recovery for the SGRP¹³ and premature closure of SONGS Units 2 & 3 in the following areas:¹⁴

- Whether to disallow recovery of a percentage of base plant, and if so what percent and the basis for such disallowance.
- Whether to refund costs related to the SGRP collected in rates prior to February 2012.
- Whether to allow for a rate of return on any base plant eligible for recovery in customer rates. Should the rates

¹³ The reasonableness review conducted here will include the entire SGRP and other costs incurred as a result of the premature shutdown of SONGS Units 2 & 3, that were, pursuant to the Settlement, included in rates from the date the SGRP went online in January 2010.

¹⁴ *Supra* 4 at 8. "This OII was opened as a ratesetting proceeding to consider various issues related to the extended outages at SONGS Units 2 and 3, including: (1) reasonable operating & capital costs for the Utilities for 2012 (a test year for rates); (2) what portions of the SONGS facility should reasonably remain in rate base; and (3) what SGRP costs are reasonable to recover in rates. The Commission has a duty to ensure that ratepayers only pay just and reasonable rates." The scope of the hearing above intends to ensure we have a full record to meet this duty in issuing a proposed decision on the pending PFMs that ensures ratepayers only pay just and reasonable rates associated with the SGRP.

authorized in the settlement remain as adopted, something less, or 0%?

- Whether an additional \$86.95 million in refunds relating to 2012 expenses incurred at SONGS should be recovered by ratepayers.
- Whether the utilities should be directed to provide refunds for foregone sales revenues associated with SONGS between February 2012 and June of 2013.
- Whether to credit ratepayers for the book value of \$592 million, or a portion of this amount, of the unsold nuclear fuel.
- Whether the utilities should be required to compensate ratepayers for the amount MHI was found to be liable under the replacement steam generator contractor (\$138 million).
- Whether SCE and SDG&E should be responsible for the award of legal costs to MHI and its own legal costs for the International Chamber of Commerce (ICC) arbitration award.

The parties are directed to focus their testimony on whether the utilities should be allowed recovery for the above items in rates, and the appropriate rate recovery amount, if any, for each item. Testimony of the parties should include, but is not limited to, analysis of the following items:

- The comparison between the adopted settlement and the “Bristol Notes” prepared by John Geesman set forth in the letter to Ms. Sue Kately, Chief consultant, Assembly Utilities and Commerce Committee dated April 13, 2015 attached A4NR’s April 27, 2015 PFM.
- Did SCE fail to disclose critical information that it possessed at the time of settlement negotiations regarding limitations on the sale of unused nuclear fuel previously purchased?

- Did the contract between MHI and SCE contain unreasonable limited liability provisions that were not disclosed to parties or the Commission prior to adoption of D.14-11-040? If so who should bear the risk of such provisions where, as in this case, the contract provisions determined limits on liability for failure of critical components of the plant?
- Are SCE's litigation costs excessive in relation to the ICC Arbitration Award outcome?¹⁵
- Cost comparison of capitol recovery in rates authorized in D.14-11-040 with proposed options from parties that may include: 100% of remaining undepreciated capital costs or lesser portion; with rate of return ranging from 0% to 2.62% on remaining equity; and recovery over what period of time (4 years, 10 years or some other time period).

We will consider each area above in light of the information available today. This includes consideration of information available to the Utilities (individually or collectively) that should have been made available to all parties in the proceeding at the time settlement negotiations occurred. The record¹⁶ is not limited to what was known to the parties at the time D.14-11-040 was adopted. This is not to say that all information not available to SCE or SDG&E at the time it made decisions regarding the SGRP will be imputed after the fact. However, if SCE had information or reasonably should have anticipated certain consequences would or could result in a given situation, this information would

¹⁵ This is consistent with §4.11(i) that provides for Commission discretion in review of SONGS litigation costs to ensure such costs are not excessive in relation to recovery.

¹⁶ The record to be considered in issuing a proposed decision includes all information that was received prior to adoption of D.14-11-040 up to the present, as well as any additional information that is officially noticed, and all pleadings and future testimony submitted in accordance with this ruling and the Commission's Rules of Practice and Procedure.

likely be relevant to assessing the reasonableness of any allowed recovery in rates for purposes of our review.

Parties may not submit written testimony and cross examination regarding how to address the Settlement provisions concerning the \$25 million contribution to the University of California for research regarding reduction of greenhouse gas (GHG) emissions in light of the previously unnoticed *ex parte* contacts between former President Peevey and the University of California. This issue will not be addressed through additional testimony or as part of the evidentiary hearings. Parties may address this issue through legal briefing only.

6. Schedule

The schedule for the remainder of the proceeding is set forth below.

Event	Date
Utilities file an updated settlement implementation summary (initial implementation summary served and filed June 2, 2016)	January 31, 2018
Party Concurrent Testimony (served)	February 23, 2018
Party Concurrent Reply/Rebuttal Testimony (served)	March 16, 2018
Final Date for Submission of Prehearing Motions and Party Stipulation of Undisputed Facts; (this includes, but is not limited to, all discovery motions, motions to strike, motions for official notice, and motions to file under seal).	March 26, 2018
Status Conference –(Discovery Motions and PHC procedural and logistical matters) (Los Angeles)	April 4, 2018 10:00 a.m.
Public Participation Hearing (Community Center Costa Mesa)	April 4, 2018 6:00 p.m.
Evidentiary Hearings (Los Angeles)	April 30-May 4 and May 14-18, 2018 10:00 a.m. -3:30pm (parties to arrive at 9:30 a.m. to address off the record administrative and

Event	Date
	logistical matters. Parties are to be prepared to begin hearings- go on the record- at 10:00 a.m.).
Concurrent Closing Briefs Filed	June 15, 2018
Concurrent Reply Briefs Filed	June 29, 2018
Public Participation Hearing (Community Center Costa Mesa)	July 18, 2018
Proposed Decision	TBD

At the initial status conference in this proceeding, SCE agreed to establish a public web page to make available pleadings, data request responses, testimony, and monthly reports required by the OII. On January 16, 2013, SCE notified the Service List of this proceeding that the web page had been established and was accessible through the following link:

<http://www3.sce.com/sscc/law/dis/SongsOIIDocLibrary.nsf/viewByCategory.xsp>.

In addition, the web page is searchable by key word, and includes a link to the NRC's webpage dedicated to SONGS. SCE is directed to continue to make information in this proceeding available at this public web page. SCE is also directed to submit all new information including the updated Settlement implementation summary and testimony served in this proceeding to the Commission's Supporting Documents online system.

As a co-owner, San Diego Gas & Electric Company (SDG&E) continues to have a duty to monitor SCE's responses in this OII and to supplement them or challenge them based on its own obligation to ensure safe and reliable service and its obligation to the Commission under Rule 1.1. SDG&E shall continue to make its quarterly reports required by the OII available to the public through its website. SDG&E shall also submit its quarterly reports, updated Settlement

implementation summary, and any testimony served in this proceeding to the Commission's Supporting Documents online system.

7. Coordination of Issues by Parties

The parties are again directed to coordinate and cooperate with one another on pre-hearing matters, including, but not limited to, discovery matters, stipulation of undisputed facts, coordination regarding witness list, cross examination, and scheduling. Again, to the fullest extent possible, we urge parties to jointly plan their analysis with the goal to avoid repetition, present joint analysis of issues, and consider joint presentations of witnesses and unified cross-examination. We encourage a single or unified presentation by topic or issue to the extent parties share a position on specific issues.

We also expect parties to coordinate and cooperate in preparing and submitting a Stipulation of Undisputed Facts as to activities leading up to the closure of SONGS Units 2 & 3, as well as facts not in dispute that occurred after closure of the facility. Parties should consider the ICC Arbitration Award, the existing record in this proceeding, and the record in A.04-02-026, as well as relevant Nuclear Regulatory Commission documents to prepare the Stipulation of Undisputed Facts. The parties have referenced facts set forth in these documents in various pleadings filed in this proceeding.

This ruling also provides notice to the parties that we are taking official notice of the ICC Arbitration Award, the reports of the Nuclear Regulatory Commission regarding the premature closure of SONGS Units 2 & 3 found on the NRC website at <https://www.nrc.gov/reactors/operating/ops-experience/tube-degradation.html>, and the record in A.04-02-026, consistent

with Rule 13.9.¹⁷ Any party objecting to official notice of these items shall file a formal objection within 10 days of this ruling.

All parties shall comply with the Commission's Rules, comply with Assigned Commissioner and ALJ rulings, conduct themselves in a professional manner, and ensure that all documents to be filed with the Commission are effectively and timely filed electronically with the Commission's Docket Office. All parties that intend to participate in the remainder of this proceeding shall comply with the attached Hearing Room Protocol and Rules of Conduct for I.12-10-013 et al. adopted herein for purposes of this proceeding (**Appendix B**). .

7. Final Oral Argument

A party in a ratesetting proceeding in which a hearing is held has the right to make a Final Oral Argument (FOA) before the Commission, if the argument is requested within the Closing Brief (Rule 13.13). Any party to this proceeding that intends to make a FOA is to make such request in the Closing brief consistent with the schedule set forth above.

8. Ex Parte Ban

Any and all *ex parte* communications with any decision maker or Commissioner advisors regarding all issues in this proceeding continue to be prohibited. Further, all communications with any Commissioner or Commissioner advisors regarding procedural matters continue to be prohibited. Questions or clarifications from parties regarding procedural matters shall be communicated to the assigned ALJ by e-mail and the party sending the e-mail communication shall copy all parties listed on the proceeding service list.

¹⁷ Official Notice of Facts. Official notice may be taken of such matters as may be judicially noticed by the courts of the State of California pursuant to Evidence Code section 450 *et seq.*

IT IS RULED that:

1. The schedule for the remainder of the proceeding is adopted as set forth in this ruling.
2. The scope for evidentiary hearings and briefing for the remaining issues before the Commission is adopted as set forth in this ruling.
3. Parties shall submit all testimony or other supporting documents to supporting documents as described in **Appendix A**.
4. All parties shall abide by the Commission's Rules of Practice and Procedure, specially Rule 1.1, comply with Assigned Commissioner and Administrative Law Judge rulings, including the Hearing Room Protocols and Rules of Conduct for I.12-10-013 set forth in **Appendix B** to this ruling
5. *Ex parte* communications between parties and decision makers continue to be prohibited.

Dated January 8, 2018, at San Francisco, California

/s/ MICHAEL PICKER
Michael Picker
Assigned Commissioner

/s/ DARCIE L. HOUCK
Darcie L. Houck
Administrative Law Judge

APPENDIX A

The following text may be attached as an appendix or included as appropriate (e.g. the filing of supporting documents is anticipated shortly after issuing the scoping memo). If included within the text of the scoping memo it is suggested it follow section 8.

1. Electronic Submission and Format of Supporting Documents

The Commission's web site now allows electronic submittal of supporting documents (such as testimony and work papers).

Parties shall submit their testimony or workpapers in this proceeding through the Commission's electronic filing system.¹ Parties must adhere to the following:

- The Instructions for Using the "Supporting Documents" Feature, (<http://docs.cpuc.ca.gov/SearchRes.aspx?docformat=ALL&DocID=158653546>) and
- The Naming Convention for Electronic Submission of Supporting Documents (<http://docs.cpuc.ca.gov/SearchRes.aspx?docformat=ALL&DocID=100902765>).
- The Supporting Document feature does not change or replace the Commission's Rules of Practice and Procedure. Parties must continue to adhere to all rules and guidelines in the Commission's Rules of Practice and Procedures including but not limited to rules

¹ These instructions are for submitting supporting documents such as testimony and work papers in formal proceedings through the Commission's electronic filing system. Parties must follow all other rules regarding serving testimony. Any document that needs to be formally filed such as motions, briefs, comments, etc., should be submitted using Tabs 1 through 4 in the electronic filing screen.

for participating in a formal proceeding, filing and serving formal documents and rules for written and oral communications with Commissioners and advisors (i.e. “ex parte communications”) or other matters related to a proceeding.

- The Supporting Document feature is intended to be solely for the purpose of parties submitting electronic public copies of testimony, work papers and workshop reports (unless instructed otherwise by the Administrative Law Judge), and does not replace the requirement to serve documents to other parties in a proceeding.
- Unauthorized or improper use of the Supporting Document feature will result in the removal of the submitted document by the CPUC.
- Supporting Documents should not be construed as the formal files of the proceeding. The documents submitted through the Supporting Document feature are for information only and are not part of the formal file (i.e. “record”) unless accepted into the record by the Administrative Law Judge.

All documents submitted through the “Supporting Documents” Feature shall be in PDF/A format. The reasons for requiring PDF/A format are:

- Security – PDF/A prohibits the use of programming or links to external executable files. Therefore, it does not allow malicious codes in the document.
- Retention – The Commission is required by [Resolution](#) L-204, dated September 20, 1978, to retain documents in formal proceedings for 30 years. PDF/A is an independent standard and the Commission staff anticipates that programs will remain available in 30 years to read PDF/A.

- Accessibility – PDF/A requires text behind the PDF graphics so the files can be read by devices designed for those with limited sight. PDF/A is also searchable.

Until further notice, the “Supporting Documents” do not appear on the “Docket Card”. In order to find the supporting documents that are submitted electronically, go to:

- Online documents, choose: “[E-filed Documents](#)”,
- Select “Supporting Document” as the document type, (do not choose testimony)
- Type in the proceeding number and hit search.

Please refer all technical questions regarding submitting supporting documents to:

- Kale Williams (kale.williams@cpuc.ca.gov) 415 703- 3251 and
- Ryan Cayabyab (ryan.cayabyab@cpuc.ca.gov) 415 703-5999

(END OF APPENDIX A)

APPENDIX B

Hearing Room Protocol and Rules of Conduct For Proceeding I.12-10-013

The hearing room protocol and rules of conduct (HR Protocol) set forth below shall apply to each and every party¹ that appears before the California Public Utilities Commission (Commission) in proceeding I.12-10-013. All party representatives owe a duty of professionalism to their clients, opposing parties and their counsel, the Commission, Commissioners, Administrative Law Judges, and the public as a whole. Those duties include, among others: civility, professional integrity, personal dignity, candor, diligence, respect, courtesy, cooperation and competence.

All parties and their representatives must comply with Rule 1.1 of the Commission's Rules of Practice. The text of Rule 1.1 is set forth below:

1.1. (Rule 1.1) Ethics.

Any person who signs a pleading or brief, enters an appearance, offers testimony at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never to mislead the

¹ Hereafter the term party in this document includes all parties that are self-represented, or any individual representing a party other than themselves, whether or not such individual is an attorney or not. Party and party representative may be used interchangeably.

Commission or its staff by an artifice or false statement of fact or law.

This HR Protocol provides general guiding principles in each area addressed followed by specific examples which are not intended to be all-encompassing.

Every party representative who enters an appearance in this matter shall comply with this HR Protocol. Parties are to comply with both the spirit and letter of this HR Protocol. Nothing in this HR Protocol, however, shall be interpreted to contradict or supersede any Order of the Commission or subsequent ruling by the Assigned Commissioner or Administrative Law Judge. Parties that do not comply with Rule 1.1 or this HR Protocol may be fined or barred from participating in the evidentiary hearing.

This HR Protocol should be read in the context of the California Public Utilities Code, the Commission's Rules of Practice and Procedure, the standards of professional conduct required of members of the State Bar of California (for attorneys appearing before the Commission), and all parties' duty to comply with Rule 1.1 when appearing before the Commission.

1. Responsibilities of the Party to Other Parties and the Commission

A party should work to achieve his or her or his or her client's lawful and meritorious objectives expeditiously and as economically as possible in a civil and professional manner. However, a party shall not pursue positions in the proceeding (or any other course of action) that do not have merit, obstructs the proceeding process, or otherwise interferes with the proceeding in a manner that disrespects the Commission (which includes the Commission's Commissioners

and Administrative Law Judges), unduly delays the proceeding, or creates a hostile or abusive hearing environment.

2. Writings Submitted to the Commission

Written materials submitted to the Commission shall always be factual and concise, accurately state current law, and fairly represent the parties' positions without unfairly attacking the other parties or the Commission.

To comply with this requirement:

- a. Facts that are not properly introduced as part of the evidentiary record in the proceeding shall not be used in written briefs or other filings.
- b. A party shall avoid denigrating the intelligence, ethics, morals, integrity, or personal behavior of a party, counsel, witness, or the Commission, Commissioners, or the Administrative Law Judges.

3. Communications with other parties and the Commission

A party shall at all times be civil, courteous, and accurate in communicating with other parties and the Commission, whether in writing or orally.

For example:

- a. A party shall not in either verbally or in writing (i) assign a position to another party that the other party has not taken, or (ii) to create a "record" of events that have not occurred or that includes evidence not properly introduced into the record.
- b. A party shall not copy Commissioners or the Assigned Administrative Law Judge on any correspondence between parties unless permitted under Commission rules and all parties are served with such letter.

4. Discovery

A party shall conduct discovery in a manner designed to ensure the timely, efficient, cost effective and just resolution of a dispute.

A party shall promptly and completely comply with all discovery requirements consistent with Commission rules, orders, and rulings of the assigned Commissioner and/or Administrative Law Judge.

5. Motion Practice

Motions should be filed or opposed only in good faith and when the issue cannot be otherwise resolved.

To comply with this requirement:

- a. Before filing a motion, a party shall engage in a good faith effort to resolve the issue.
- b. A party shall not engage in conduct that forces another party to file a motion that he or she does not intend to oppose.
- c. Parties shall comply with the Commission Rules or other applicable order or ruling concerning the meet and confer process, and engage in a good faith effort to resolve or informally limit all applicable issues before filing a motion.

6. Ex Parte Communications with the Commissioners, Commissioner Advisors, and the Assigned Administrative Law Judge

Ex parte communications with any Commissioner or his/her advisors, or with the assigned Administrative Law Judge are prohibited in this proceeding.

7. Hearings and Status Conferences

A party (including the party's representative if represented by counsel) shall conduct himself or herself in hearings and status conferences consistent with Rule 1.1, including but not limited to conduct that assists the Commission in

properly reviewing the proceeding, and showing respect for the Commission, Commissioners, and Administrative Law Judges. (See Rule 1.1 above)

To comply with this requirement:

- a. A party shall be punctual and prepared for all hearing appearances.
- b. A party shall always deal with parties, counsel, witnesses, Commission personnel, the assigned Commissioner and assigned Administrative Law Judge with courtesy and civility.
- c. A party shall only make objections during a trial or hearing for legitimate and good faith reasons. A party should not make such objections only for the purpose of harassment or delay.
- d. A party shall honor requests made by other parties during hearings that do not prejudice his or her client's rights.
- e. While appearing before the Commission, each party shall address all arguments, objections, and requests to the presiding officer, rather than addressing them directly to other parties.
- f. While appearing before the Commission, a party shall demonstrate sensitivity to any party, witness, or other party who has requested, or may need, accommodation as a person with physical or mental impairment. This will help foster full and fair access to the Commission for all persons.
- g. Each party will be limited to 8 minutes to present comment or argument during a noticed prehearing conference, status conference, or oral argument as appropriate before the Commission.
- h. During evidentiary hearings parties will be limited to cross examination of each witness where parties have provided direct written testimony in accordance with the Commission's Rules. Cross examination means asking questions of the witness within the scope of his or her direct testimony or testimony provided under redirect. A party representative may not engage in dialogue or argue with the witness. A party representative is not to argue with the witness or presiding officer, nor is a party representative to present argument or testimony while cross examining a witness during the scheduled evidentiary hearings.

- i. Legal argument is to be presented through written briefs and if requested at a scheduled and noticed date and time set for oral argument before the Commission.

8. Communication Generally

Parties should conduct themselves with clients, other parties, and the public in a manner consistent with the requirements of Rule 1.1 in regard to this proceeding.

To comply with this requirement:

- a. A party's public communications shall at all times and under all circumstances reflect appropriate civility, professional integrity, personal dignity, and respect for the Commission. This rule does not prohibit good faith, factually based expressions of dissent or criticism made by a party in public or private discussions having a purpose to motivate improvements in the Commission process.
- b. A party shall not make statements which are false, misleading, or exaggerated in order to draw attention to themselves with the intent to obstruct the Commission process.
- c. A party shall not create a false or misleading record of events.
- d. A party shall refrain from engaging in conduct that exhibits or is intended to appeal or engender bias against a person on account of that person's race, color, religion, sex, national origin, sexual orientation, or disability, whether that bias is directed to other counsel, Commission personnel, witnesses, parties, Commissioners, administrative law judges, or any other participants.

(END OF APPENDIX B)